

Introduced by Senator Florez

January 25, 2005

An act to amend Section 14845 of the Government Code, and to amend Sections 999, 999.5, 999.7, ~~999.9~~, 999.11, and 999.12 of the Military and Veterans Code, relating to veterans.

LEGISLATIVE COUNSEL'S DIGEST

SB 115, as amended, Florez. California Disabled Veteran Business Enterprise Program.

~~(1) Under "existing law,"~~

Under existing law, state agencies and all other state entities contracting for materials, supplies, equipment, alteration, repair, or improvement are required to have at least 3% participation goals for disabled veteran business enterprises. Existing law requires the Department of Veterans Affairs and the awarding departments to appoint a Disabled Veteran Business Enterprise Program Advocate to assist in meeting the participation goals.

~~The~~

This bill would specify that the Department of General Services is the administering agency of the California Disabled Veteran Business Enterprise Program, except in the case of contracts for professional bond services, would specify the duties of the Department of General Services in meeting that requirement, *and* would set standards for meeting the program's participation goals, ~~and would specify reporting criteria regarding contracts entered into by awarding departments that participate in the program.~~

~~(2) Existing law makes it a misdemeanor to violate specified prohibitions relating to disabled veteran business enterprises.~~

~~This bill would make technical, conforming changes to that provision.~~

~~(3) Existing~~

~~Existing law requires the Department of General Services' small business advocate to provide, at a minimum, specified services to small businesses.~~

This bill, instead, would require the department's small business advocate to provide these services to certified small businesses and certified disabled veteran business enterprises.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14845 of the Government Code is
2 amended to read:

3 14845. Using existing resources, the Department of General
4 Services' small business advocate shall, at a minimum, provide
5 the following services:

6 (a) Assist certified small businesses and certified disabled
7 veteran business enterprises by providing information regarding
8 all of the following:

9 (1) Identification of potential certified small business and
10 certified disabled veteran business enterprise subcontractors and
11 potential subcontracting opportunities.

12 (2) Solicitation protest procedures and timelines.

13 (3) Prompt payment procedures.

14 (b) Using existing resources, develop and maintain an
15 outreach and education program to assist certified small
16 businesses and certified disabled veteran business enterprises to
17 establish the California multiple award schedule. The department
18 shall actively promote the availability of certified small business
19 and certified disabled veteran business enterprise suppliers to
20 deliver or provide a broad range of goods and services to
21 governmental agencies through their participation in the
22 California multiple award schedule program established pursuant
23 to Chapter 2 (commencing with Section 10290) of Part 2 of
24 Division 2 of the Public Contract Code and other types of
25 contracts established by state agencies for repetitively used and
26 commonly needed goods and services.

(c) Whenever the director consolidates the needs of multiple state agencies and establishes a contract for repetitively purchased or commonly needed goods or services, the director shall both encourage bidders to utilize certified small business and certified disabled veteran business enterprise suppliers and subcontractors, and utilize multiple award methods whenever practicable to further ensure that a fair proportion of needed goods and services are obtained from certified small businesses and certified disabled veteran business enterprises.

(d) Using existing resources, establish a training and development program for acquisition professionals, including methods for structuring solicitations to enhance the participation of certified small businesses and certified disabled veteran business enterprises in state contracting.

(e) Using existing resources, the department shall establish a recognition and awards program for state employees who make an outstanding contribution to the state's overall effort to increase the level of certified small business participation in state contracting or certified disabled veteran business enterprise participation in state contracting.

(f) Prepare, and make available to the public, a directory of certified small business and certified disabled veteran business enterprise suppliers.

(g) In its review of state agency acquisitions, the department, as applicable, shall identify areas where improvements in the level of participation of certified small businesses and certified disabled veteran business enterprises in state contracting can be achieved.

SEC. 2. Section 999 of the Military and Veterans Code is amended to read:

999. (a) This article shall be known as, and may be cited as, the California Disabled Veteran Business Enterprise Program. *The California Disabled Veteran Business Enterprise Program is established to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. It is the intent of the Legislature that every state procurement authority honor California's disabled veterans by taking all practical actions necessary to meet or exceed the*

1 *disabled veteran business enterprise participation goal of a*
2 *minimum of 3 percent of total contract value.*

3 (b) As used in this article, the following definitions apply:

4 (1) “Administering agency” means the Treasurer in the case of
5 contracts for professional bond services, and the Department of
6 General Services’ Office of Small Business and Disabled
7 Veteran Business Enterprise Services, in the case of contracts
8 governed by Section 999.2.

9 (2) “Awarding department” means any state agency,
10 department, governmental entity, or other officer or entity
11 empowered by law to issue bonds or enter into contracts on
12 behalf of the State of California.

13 (3) “Bonds” means bonds, notes, warrants, certificates of
14 participation, and other evidences of indebtedness issued by, or
15 on behalf of, the State of California.

16 (4) “Contract” includes any agreement or joint agreement to
17 provide professional bond services to the State of California or
18 an awarding department. “Contract” also includes any agreement
19 or joint development agreement to provide labor, services,
20 materials, supplies, or equipment in the performance of a
21 contract, franchise, concession, or lease granted, let, or awarded
22 for, and on behalf of, the State of California.

23 (5) (A) “Contractor” means any person or persons, regardless
24 of race, color, creed, national origin, ancestry, sex, marital status,
25 disability, religious or political affiliation, age, or any sole
26 proprietorship, firm, partnership, joint venture, corporation, or
27 combination thereof who submits a bid and enters into a contract
28 with a representative of a state agency, department, governmental
29 entity, or other officer empowered by law to enter into contracts
30 on behalf of the State of California. “Contractor” includes any
31 provider of professional bond services who enters into a contract
32 with an awarding department.

33 (B) “Disabled veteran business enterprise contractor,
34 subcontractor, or supplier” means any person or entity that has
35 been certified by the administering agency pursuant to this article
36 and that performs a “commercially useful function,” as defined
37 below, in providing services or goods that contribute to the
38 fulfillment of the contract requirements:

1 (i) A person or an entity is deemed to perform a
2 “commercially useful function” if a person or entity does all of
3 the following:

4 (I) (aa) Is responsible for the execution of a distinct element
5 of the work of the contract.

6 (ab) Carries out the obligation by actually performing,
7 managing, or supervising the work involved.

8 (ac) Performs work that is normal for its business services and
9 functions.

10 (II) Is not further subcontracting a portion of the work that is
11 greater than that expected to be subcontracted by normal industry
12 practices.

13 (ii) A contractor, subcontractor, or supplier will not be
14 considered to perform a “commercially useful function” if the
15 contractor’s, subcontractor’s, or supplier’s role is limited to that
16 of an extra participant in a transaction, contract, or project
17 through which funds are passed in order to obtain the appearance
18 of disabled veteran business enterprise participation.

19 (6) “Disabled veteran” means a veteran of the military, naval,
20 or air service of the United States, including, but not limited to,
21 the Philippine Commonwealth Army, the Regular Scouts, “Old
22 Scouts,” and the Special Philippine Scouts, “New Scouts,” who
23 has at least a 10-percent service-connected disability and who is
24 domiciled in the State of California.

25 (7) (A) “Disabled veteran business enterprise” means a
26 business certified by the administering agency as meeting all of
27 the following requirements:

28 (i) It is a sole proprietorship at least 51 percent owned by one
29 or more disabled veterans or, in the case of a publicly owned
30 business, at least 51 percent of its stock is owned by one or more
31 disabled veterans; a subsidiary that is wholly owned by a parent
32 corporation, but only if at least 51 percent of the voting stock of
33 the parent corporation is owned by one or more disabled
34 veterans; or a joint venture in which at least 51 percent of the
35 joint venture’s management, control, and earnings are held by
36 one or more disabled veterans.

37 (ii) The management and control of the daily business
38 operations are by one or more disabled veterans. The disabled
39 veterans who exercise management and control are not required
40 to be the same disabled veterans as the owners of the business.

(iii) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

(B) Notwithstanding subparagraph (A), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, and solely for purposes of any contract entered into before that death or certification, that business shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.

(8) “Foreign corporation,” “foreign firm,” or “foreign-based business” means a business entity that is incorporated or has its principal headquarters located outside the United States of America.

(9) “Goal” means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

(10) “Management and control” means effective and demonstrable management of the business entity.

(11) “Professional bond services” include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter’s counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

SEC. 3. Section 999.5 of the Military and Veterans Code is amended to read:

999.5. (a) The administering agency for the California Disabled Veteran Business Enterprise Program ~~shall be~~ *is* the Department of General Services, except in the case of contracts for professional bond services. The Department of General Services shall consult with the ~~State~~ *California* Disabled Veteran Business Enterprise Program Advocate, appointed by the Department of Veterans Affairs pursuant to Section 999.11, on all matters relating to the California Disabled Veteran Business Enterprise Program. The ~~Department of Veterans Affairs shall~~

1 ~~establish a method of monitoring adherence to the goals specified~~
2 ~~in Sections 999.1 and 999.2.~~

3 ~~(b) The Department of Veterans Affairs shall promote the~~
4 ~~California Disabled Veteran Business Enterprise Program to the~~
5 ~~fullest extent possible and shall maintain complete records of its~~
6 ~~outreach efforts and set up a system to track its effectiveness.~~
7 ~~This system shall include regular, periodic surveys of newly~~
8 ~~certified disabled veteran business enterprises to determine how~~
9 ~~they learned of the program, why they became certified, and~~
10 ~~what their experience with awarding departments has been.~~
11 ~~Director of General Services shall adopt rules and regulations~~
12 ~~establishing a uniform process for state contracting that would~~
13 ~~provide a disabled veteran business enterprise participation~~
14 ~~incentive to bidders. The incentive program shall be used by all~~
15 ~~state agencies when awarding contracts.~~

16 ~~(b) The Department of Veterans Affairs shall do all of the~~
17 ~~following:~~

18 ~~(1) Establish a method of monitoring adherence to the goals~~
19 ~~specified in Sections 999.1 and 999.2.~~

20 ~~(2) Promote the California Disabled Veteran Business~~
21 ~~Enterprise Program to the fullest extent possible.~~

22 ~~(3) Maintain complete records of its promotional efforts.~~

23 ~~(4) Establish a system to track the effectiveness of its efforts to~~
24 ~~promote the California Disabled Veteran Business Enterprise~~
25 ~~Program, which shall include regular, periodic surveys of newly~~
26 ~~certified disabled veteran business enterprises to determine how~~
27 ~~they learned of the program, why they became certified, and~~
28 ~~what their experience with awarding departments has been.~~

29 ~~(c) An awarding department shall not credit toward the~~
30 ~~department's 3-percent goal state funds expended on a contract~~
31 ~~with a disabled veteran business enterprise that does not meet~~
32 ~~and maintain the certification requirements.~~

33 ~~(d) The administering agency shall adopt rules and~~
34 ~~regulations, including standards for good faith efforts, for the~~
35 ~~purpose of implementing this section. Emergency regulations~~
36 ~~consistent with this section may be adopted.~~

37 ~~SEC. 4. Section 999.7 of the Military and Veterans Code is~~
38 ~~amended to read:~~

39 ~~999.7. (a) In addition to the reporting requirements set forth~~
40 ~~in subdivision (b) of Section 999.5, on September 1 of each year,~~

~~the Disabled Veteran Business Enterprise Program Advocate for each awarding department, appointed in accordance with Section 999.12, shall deliver to the administering agency a report on the level of participation by disabled veteran business enterprises in contracts identified in this article for the previous fiscal year.~~

~~(b) The written report may include the following information:~~

~~(1) The total number of state contracts let by the department during the reporting year.~~

~~(2) The total number of those contracts that included a disabled veteran business enterprise.~~

~~(3) The total number of different disabled veteran business enterprises that work on those contracts.~~

~~(4) The amount of the average contract payment to those disabled veteran business enterprises.~~

~~(5) The total amount awarded to disabled veteran business enterprises by the department for each of the previous three years.~~

~~(c) If the awarding department has not met the established goals for that year, the report shall state the reasons for the awarding department's inability to achieve the goals and shall identify steps the awarding department shall take in an effort to achieve the goals.~~

~~(d) (1) On January 1 of each year, the Department of General Services shall deliver to the Governor, the Legislature, and the State Disabled Veteran Business Enterprise Program Advocate, a report that summarizes the reports specified in subdivision (a).~~

~~(2) The report shall be prepared in consultation with the Disabled Veteran Business Enterprise Program Advocate in the Department of Veterans Affairs.~~

~~SEC. 5. Section 999.9 of the Military and Veterans Code is amended to read:~~

~~999.9. (a) It shall be unlawful for a person to do any of the following:~~

~~(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a disabled veteran business enterprise for the purpose of this article.~~

~~(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other~~

1 representation, to a state official or employee for the purpose of
2 influencing the certification or denial of certification of any
3 entity as a disabled veteran business enterprise.

4 ~~(3) Willfully and knowingly obstruct, impede, or attempt to~~
5 ~~obstruct or impede, any state official or employee who is~~
6 ~~investigating the qualifications of a business entity that has~~
7 ~~requested certification as a disabled veteran business enterprise.~~

8 ~~(4) Knowingly and with intent to defraud, fraudulently obtain,~~
9 ~~attempt to obtain, or aid another person in fraudulently obtaining~~
10 ~~or attempting to obtain, public moneys, contracts, or funds~~
11 ~~expended under a contract, that are awarded by any state agency,~~
12 ~~department, officer, or other state governmental agency, to which~~
13 ~~the person is not entitled under this article.~~

14 ~~(5) Knowingly and with intent to defraud, fraudulently~~
15 ~~represent participation of a disabled veteran business enterprise~~
16 ~~in order to obtain or retain a bid preference or a state contract.~~

17 ~~(6) Willfully and knowingly make or subscribe to any~~
18 ~~statement, declaration, or other document that is fraudulent or~~
19 ~~false as to any material matter, whether or not that falsity or fraud~~
20 ~~is committed with the knowledge or consent of the person~~
21 ~~authorized or required to present the declaration, statement, or~~
22 ~~document.~~

23 ~~(7) Willfully and knowingly aid or assist in, or procure,~~
24 ~~counsel, or advise, the preparation or presentation of a~~
25 ~~declaration, statement, or other document that is fraudulent or~~
26 ~~false as to any material matter, regardless of whether that falsity~~
27 ~~or fraud is committed with the knowledge or consent of the~~
28 ~~person authorized or required to present the declaration,~~
29 ~~statement, or document.~~

30 ~~(8) Willfully and knowingly fail to file any declaration or~~
31 ~~notice with the awarding agency that is required by Section~~
32 ~~999.2.~~

33 ~~(9) Establish, or knowingly aid in the establishment of, or~~
34 ~~exercise control over, a firm found to have violated any of~~
35 ~~paragraphs (1) to (8), inclusive.~~

36 ~~(b) Any person who violates any of the provisions of~~
37 ~~subdivision (a) shall be guilty of a misdemeanor punishable by~~
38 ~~imprisonment in the county jail not exceeding six months or by a~~
39 ~~fine not exceeding one thousand dollars (\$1,000), or by both. In~~
40 ~~addition, the person shall be liable for a civil penalty of not less~~

1 ~~than ten thousand dollars (\$10,000) nor more than thirty~~
2 ~~thousand dollars (\$30,000) for the first violation, and a civil~~
3 ~~penalty of not less than thirty thousand dollars (\$30,000) nor~~
4 ~~more than fifty thousand dollars (\$50,000) for each additional or~~
5 ~~subsequent violation. A defendant who violates any of the~~
6 ~~provisions of subdivision (a) shall pay all costs and attorney's~~
7 ~~fees incurred by the plaintiff in a civil action brought pursuant to~~
8 ~~this section.~~

9 ~~(c) (1) The Department of General Services shall suspend any~~
10 ~~person who violates subdivision (a) from bidding on, or~~
11 ~~participating as either a contractor, subcontractor, or supplier in,~~
12 ~~any state contract or project for a period of not less than three~~
13 ~~years, and if certified as a disabled veteran business enterprise,~~
14 ~~the department shall revoke the business' certification for a~~
15 ~~period of not less than three years. An additional or subsequent~~
16 ~~violation shall extend the periods of suspension and revocation~~
17 ~~for a period of not less than five years. The suspension and~~
18 ~~revocation shall apply to the principals of the business and any~~
19 ~~subsequent business formed or financed by, or affiliated with,~~
20 ~~those principals.~~

21 ~~(2) The Department of General Services shall prohibit any~~
22 ~~business or person who fails to satisfy the penalties, costs, and~~
23 ~~attorney's fees imposed pursuant to subdivision (b) from further~~
24 ~~contracting with the state until the penalties are satisfied.~~

25 ~~(d) The awarding department shall report all alleged violations~~
26 ~~of this section to the Department of General Services. The~~
27 ~~Department of General Services shall subsequently report all~~
28 ~~alleged violations to the Attorney General who shall determine~~
29 ~~whether to bring a civil action against any person or firm for~~
30 ~~violation of this section.~~

31 ~~(e) The Department of General Services shall monitor the~~
32 ~~status of all reported violations and shall maintain and make~~
33 ~~available to all state departments a central listing of all firms and~~
34 ~~persons who have been determined to have committed violations~~
35 ~~resulting in suspension.~~

36 ~~(f) No awarding department shall enter into any contract with~~
37 ~~any person suspended for violating this section during the period~~
38 ~~of the person's suspension. No awarding department shall award~~
39 ~~a contract to any contractor utilizing the services of any person as~~

1 a subcontractor suspended for violating this section during the
2 period of the person's suspension.

3 ~~(g) The awarding department shall check the central listing~~
4 ~~provided by the Department of General Services to verify that the~~
5 ~~person or contractor to whom the contract is being awarded, or~~
6 ~~any person being utilized as a subcontractor or supplier by that~~
7 ~~person or contractor, is not under suspension for violating this~~
8 ~~section.~~

9 *SEC. 4. Section 999.7 of the Military and Veterans Code is*
10 *amended to read:*

11 999.7. (a) (1) On January 1 of each year, each awarding
12 department shall report to the Governor, the Legislature, the
13 Department of General Services, and the Department of Veterans
14 Affairs on the level of participation by disabled veteran business
15 enterprises in contracts identified in this article for the previous
16 fiscal year.

17 (2) If the awarding department has not met the established
18 goals for that year, the awarding department shall report to the
19 Legislature, the Department of General Services, and the
20 Department of Veterans Affairs the reasons for the awarding
21 department's inability to achieve the goals and shall identify
22 steps it shall take in an effort to achieve the goals.

23 (b) On April 1 of each year, the Department of General
24 Services shall prepare for the Governor, the Legislature, and the
25 Department of Veterans Affairs a statewide statistical summary
26 detailing each awarding department's goal achievement and a
27 statewide total of those goals.

28 *The Director of General Services shall adopt a streamlined*
29 *reporting procedure for state agencies to use in reporting their*
30 *disabled veteran business enterprise participation to the*
31 *department.*

32 ~~SEC. 6.~~

33 *SEC. 5. Section 999.11 of the Military and Veterans Code is*
34 *amended to read:*

35 999.11. The Secretary of the Department of Veterans Affairs
36 shall appoint the ~~State California~~ Disabled Veteran Business
37 Enterprise Program Advocate. The ~~State California~~ Disabled
38 Veteran Business Enterprise Program Advocate shall report
39 directly to the secretary and shall do all of the following:

1 (a) Oversee, promote, and coordinate efforts to facilitate
2 implementation of this article.

3 (b) Disseminate information on this article.

4 (c) Coordinate reports pursuant to Section 999.7.

5 (d) Coordinate with administering agencies and existing and
6 potential disabled veteran business enterprises to achieve the
7 goals specified in Sections 999.1 and 999.2.

8 (e) Coordinate with the *California* Disabled Veteran Business
9 Enterprise Program Advocate appointed in all awarding
10 departments pursuant to Section 999.12.

11 ~~SEC. 7.~~

12 *SEC. 6.* Section 999.12 of the Military and Veterans Code is
13 amended to read:

14 999.12. Each awarding department shall appoint an agency
15 Disabled Veteran Business Enterprise Program Advocate. This
16 person shall be the same individual appointed pursuant to Section
17 14846 of the Government Code. The agency Disabled Veteran
18 Business Enterprise Program Advocate shall do all of the
19 following:

20 (a) Assist certified disabled veteran business enterprises in
21 participating in that agency's contracting process.

22 (b) Assist contract officers in seeking disabled veteran
23 business enterprises to participate in the agency's contract and
24 procurement activities by performing good faith efforts to recruit
25 disabled veteran business enterprises to offer their services as
26 either a prime contractor or subcontractor on any contract
27 proposed by the awarding department that requires disabled
28 veteran business enterprise participation, and by other feasible
29 means.

30 (c) Meet regularly with the ~~State~~ *California* Disabled Veteran
31 Business Enterprise Program Advocate and contract and
32 procurement staffs of their departments to disseminate
33 information about the *California* Disabled Veteran Business
34 Enterprise Program.

35 (d) Serve as an advocate for the disabled veteran business
36 enterprises that are utilized or are proposed to be utilized as the
37 agency's contractors or subcontractors by verifying all *California*
38 Disabled Veteran Business Enterprise Program information
39 submitted to the awarding department pertaining to bidders'
40 fulfillment of contract requirements for disabled veteran business

1 enterprise participation prior to the award of such contracts, by
2 participating in the department's decisionmaking on the award of
3 contracts which require disabled veteran business enterprise
4 participation, and work with contract managers who are
5 responsible for monitoring contractors' use of disabled veteran
6 business enterprise subcontractors on awarded contracts.

7 (e) Report to the Office of Small Business and Disabled
8 Veteran Business Enterprise Services regarding any violation of
9 this article.

10 (f) Coordinate and meet, on a regular basis, with the ~~State~~
11 *California* Disabled Veteran Business Enterprise Program
12 Advocate at the Department of Veterans Affairs in an effort to
13 meet the statewide 3-percent goal provided for in Section 999.2.